

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:22-cr-0019
)	
THELMA GUMBS,)	
)	
Defendant.)	

ORDER

BEFORE THE COURT is United States of America's ("the Government") unopposed Motion to Continue Trial Pending Completion of Pre-Trial Diversion Agreement (ECF No. 31), currently scheduled for January 9, 2023. Also before the Court is Gumbs's Application and Checklist for Speedy Trial Extension, including her speedy trial waiver. (ECF No. 34.) For the reasons stated herein, the time to try this case is extended up to and including December 4, 2023.

This matter commenced on February 28, 2022, when the Government filed a criminal complaint against Gumbs. On April 8, 2022, the Government filed an information charging Gumbs with one count of Disturbance of Public Employees, in violation of Chapter 39, Code of Federal Regulations, Section 232.1(e). (ECF No. 20.) Gumbs was arraigned on the charge on April 20, 2022.

The Government contends that on October 31, 2022, the Office of Probation approved a Pre-trial Diversion Agreement accepting Gumbs into a pre-trial diversion program, and Gumbs waived her speedy trial rights during the term of the agreement. (ECF No. 31 ¶¶ 2-3.) The Government requests that the period of time within which Gumbs may be tried in this matter be extended because, if Gumbs completes the program successfully, the Government will move to dismiss the one count of the information filed in this matter on April 8, 2022. Counsel for the Government represents that he has consulted with counsel for Gumbs, who has no objection to the motion.

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While the Speedy Trial Act (the “Act”) requires that defendants be tried within seventy days of indictment, the Act specifically excludes

[a]ny period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

18 U.S.C. § 3161(h)(1)(A).

Consistent with these concerns, the United States Court of Appeals for the Third Circuit has recognized that “whether or not a case is ‘unusual’ or ‘complex,’ an ‘ends of justice’ continuance may in appropriate circumstances be granted.” *United States v. Fields*, 39 F.3d 439, 444 (3d Cir. 1994); see *United States v. Graves*, 722 F.3d 544 (3d Cir. 2013) (“The Act excludes periods of delay ‘resulting from a continuance granted by a judge,’ as long as the judge has found ‘that the ends of justice’ served by the continuance ‘outweigh the best interest of the public and the defendant in a speedy trial.’”).

The Court finds that the ends of justice served by extending the period in which the trial must begin in this matter outweighs the best interest of the public and the defendant in a speedy trial. Here, an extension of time is necessary to allow Gumbs sufficient time to complete the pre-trial diversion program and the Government to make a motion to dismiss the charge in the information if Gumbs is successful in completing the pre-trial diversion program.

The premises considered, it is hereby

ORDERED that the time beginning from the date of this order granting an extension through December 4, 2023, shall be excluded in computing the time within which the trial in this matter must be initiated pursuant to 18 U.S.C. § 3161; it is further

ORDERED that the Government’s Motion to Continue Trial Pending Completion of Pre-Trial Diversion Agreement, ECF No. 31, is hereby **GRANTED**; it is further

ORDERED that the parties **SHALL** file and serve a pre-trial brief no later than November 24, 2023, which shall include the following: (a) proposed list of witnesses; (b) proposed list of exhibits; (c) estimated length of case-in-chief and case-in-defense; (d)

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proposed non-standard *voir dire* questions; and (e) proposed non-standard jury instructions related to the elements of the charges and defenses; it is further

ORDERED that the parties shall provide the Clerk of Court with a USB Flash Drive containing electronic versions of exhibits no later than November 29, 2023;¹ and it is further

ORDERED that the Jury Selection and Trial in this matter previously scheduled for January 9, 2023, are **RESCHEDULED** to commence promptly at 9:00 A.M. on December 4, 2023, in St. Thomas Courtroom 1.

Dated: November 14, 2022

/s/_____
ROBERT A. MOLLOY
Chief Judge

¹ Counsel are advised to consult with Court technical staff to determine the proper format for saving electronic versions of exhibits. The Government's trial exhibits shall be labelled sequentially beginning with Government's Exhibit 1. Defense exhibits shall be labelled sequentially beginning with Defense Exhibit A.